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Scott Tomashefsky, Technical Lead
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street, MS-32
Sacramento, CA 95814

Re: Comments of the Department of General Services on Draft Notice of Proposed Action ("NOPA") for Adoption of Regulations Governing Data Collection and Exemptions From Cost Responsibility Surcharge. (Docket 03-CRS-01).

Dear Mr. Tomashefsky:

The California Department of General Services ("DGS") provides these comments following the July 16, 2003 workshop on the draft proposed regulations and associated draft utility information collection forms. Some of these comments echo DGS' concerns expressed in comments presented on June 16. The regulations and any accompanying forms should be designed with the understanding that customers contemplating self-generation options will need some certainty regarding their qualification for the CRS exemption; hence the application and queuing process must accommodate this need.

It is critical, from the perspective of customers evaluating certain self-generation options, that their eligibility for a CRS exemption be effectively established well before limited resources are dedicated to the project. The reason for this need is straightforward: project economics can be significantly influenced according to whether the project can qualify for certain cost exemptions or other incentives. This is why clarity regarding preliminary qualification for the CRS exemption needs to be established at least on an interim basis that is distinct from other development or regulatory steps (e.g., site preparation or equipment commitment or finalization of all operational permits). While upfront certainty is critical to project viability, the limited quantity of these exemptions also means that the queuing process must provide a reasonable timeline for the initial CRS exemption qualification as well as a mechanism to "recapture" certain exemptions from projects that can not come to fruition.

With respect to the specific draft proposed regulations, DGS echoes the concern articulated by SCE at the July 16 workshop that the initial queue period under § 1395.3(d)(1) may be too short, particularly for larger or more complicated projects, particularly given that the requirement calls for the commencement of operations within 12 months of approval of the CRS exemption request. As noted above, DGS believes that many customers may see establishment of the CRS exemption status as an early "critical path" requirement. As long as customers' projects are moving forward following establishment of the exemption qualification, they should remain in the queue as a matter of course. As currently written, the draft regulations impose a "hard deadline" that requires the customer to secure all financing, permits, interconnection, and complete project construction and testing, all in less than a 12 month period. This hard deadline imposes a new form of risk for the customer that has decided to move forward with the project following preliminary allocation of an exemption notwithstanding active development of the project. Although § 1395.4 provides a possible way to extend the queue period, the review standard (i.e., good cause and "circumstances beyond the Customer's control"), the time and cost associated with this

process could be avoided if the queue period is based upon a more flexible standard of active or diligent project development. Proof of active project development would include efforts such as the securing of permits and interconnection, construction, etc. In summary, DGS suggests that the regulations not impose a hard and artificial deadline or timeline for project completion, but rather allow the project to remain in the queue when a project shows continued viability through active development efforts. Similarly, the review standard in §1395.4 should be changed to avoid issues regarding whether or not circumstances were within the customer's control and instead focus on whether the project is being diligently pursued.

DGS supports the draft §1395.2(c)(3) insofar as it refers to "eligibility" under the CPUC or CEC programs. We note that the draft application form requires "funding" under these programs to establish eligibility, as opposed to "eligibility" under the draft regulations.[1] As noted above, DGS expects that customers may seek to establish the preliminary allocation of CRS exemptions as an initial "critical path" step in project development. For the Commission's purposes, the question should only be whether or not the project is *eligible to participate or seek funding* under these programs, not whether it has *been granted the subsidy*. While the draft language correctly reflects this standard, the draft application form does not and should be corrected.

DGS also urges the Commission to revise § 1395.3 (b) to allow for the publication of information regarding specific queues and or the status of various exemption "tranches." Section 1395.2(c)(4) outlines certain partial exemptions including date- and load-based tranches. As currently written § 1395.3 can be interpreted to preclude publication regarding the status of exemptions within particular tranches notwithstanding preliminary or provisional classification of a project. Accordingly, DGS suggests that the "be limited to:" language in §1395.3 (b) be replaced with "maintain confidential the applicant's identity, but at least specify." This suggested revision will still maintain confidentiality regarding the applicant's identity and require publication of a specific minimum set of information regarding the queue, but will also provide flexibility for publication of additional queue information.

We hope the CEC will consider these comments when finalizing the NOPA. Please feel free to contact us if you should have any questions regarding this letter.

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[1] Draft SCE form, *Application for Tariff Exemptions Related to Customer Generating Facilities*, Part 3, D, A 1: "The Generating Facility *will be funded* …."